

# HERRICK

NEW YORK  
NEWARK  
PRINCETON

ENDORSED ORDER

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All transcripts are to be ordered on an overnight basis (if not otherwise available). They are to be delivered to counsel for the witness on the date of receipt and reviewed and signed by the witness by no later than June 16, 2008. The request to depose Mr. Friedbauer is denied without prejudice. If the Bank makes a compelling case of need (or if defendant's intent to use his testimony) we will reconsider.

RECEIVED  
JUN 3 2008

Re: Signature Bank v. Ahava Food Corp., et al.

Dear Judge Dolinger:

On behalf of Signature Bank ("Signature" or the "Bank") I write to advise Your Honor of two issues concerning the parties' preparation for the June 18, 2008 hearing on the Bank's application for a preliminary injunction and temporary receiver.

First, at the end of yesterday's deposition of Fariborz Banayan, the parties could not agree to a date by which deposition transcripts would be reviewed and signed by the witnesses. In the Bank's view, corrected and signed transcripts ought to be produced prior to the June 18<sup>th</sup> hearing in the event that the hearing requires the presentation of evidence. To that end, I suggested that the parties have until June 16, 2008 to submit corrected and signed transcripts, and that any transcript not signed would be considered final for purposes of an evidentiary hearing on June 18<sup>th</sup>. While this date affects the Bank far more than defendants -- since the Bank's witnesses are not scheduled to be deposed until June 12<sup>th</sup> and 13<sup>th</sup> -- Mr. Hirsh rejected the proposal and suggested instead that we allow the "chips to fall where they may." The Bank, however, is concerned that without a final transcript, (i) witnesses will have the freedom to disclaim their testimony as "inaccurately transcribed," and/or (ii) Mr. Hirsh will claim that the deposition testimony is somehow inadmissible.<sup>1</sup> Accordingly, the Bank requests that the Court set a date by which all deposition transcripts will be deemed corrected and signed for purposes of the June 18<sup>th</sup> hearing.<sup>2</sup>

Second, Signature requests permission to schedule the deposition of Robert Friedbauer, the accountant for Ahava of California ("AOC") and the Judgment Debtors. As yesterday's deposition made clear, Mr. Friedbauer is the person most knowledgeable about the

<sup>1</sup> In that vein it is worth noting that Mr. Hirsh objected to, and moved to strike, virtually all of the documentary evidence that accompanied the Bank's Order to Show Cause, including documents that were produced by AOC.

<sup>2</sup> Given that the parties have until June 16, 2008 to advise each other and the Court whether an evidentiary hearing will be necessary, Signature respectfully suggests that June 17<sup>th</sup> may be a more appropriate date.

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basis for AOC's inclusion of Moise Banayan in AOC's 2006 tax returns (even though Moise Banayan had purportedly conveyed his interest to his brother Fariborz Banayan in August 2005). Accordingly, the Bank respectfully requests permission to depose Mr. Friedbauer on June 11, 2008.

Respectfully Submitted,



David Feuerstein

DF/fc